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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,307	03/30/2007	Byron Scott Bailey SR.	TS/4-22995/CGC 2176/PCT	4972
324	7590	12/10/2010	EXAMINER	
BASF Corporation Patent Department 500 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			HAMMER, KATIE L	
			ART UNIT	PAPER NUMBER
			1761	
			NOTIFICATION DATE	DELIVERY MODE
			12/10/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/582,307	<b>Applicant(s)</b> BAILEY ET AL.	
	<b>Examiner</b> KATIE HAMMER	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 7-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 7-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is in response to Applicant's Request for Continued Examination filed on July 21, 2010. Claims 1, 4, and 7-16 are pending for examination. Claim 1 is currently amended. Claims 2-3, 5-6, and 17 are cancelled.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 21, 2010 has been entered.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4, and 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jollenbeck et al. (US 5,009,669).

As to claim 1, Jollenbeck et al. (US '669) teaches a composition comprising (A) the compound of formula (1) wherein wherein R<sub>1</sub> is 1-phenylethyl, R<sub>2</sub>, R<sub>3</sub>, and R<sub>4</sub> are

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hydrogen, Y represents ethylene, and n is a number from 12 to 30 (see col. 1, lines 27-41, col. 2, lines 3-11 and the structure of formula (2) shown below left where Y is C<sub>1</sub>-C<sub>12</sub> alkyl, aryl, or aralkyl and X is acid radical or an inorganic oxygen containing acid) and component (B) a condensation product of formaldehyde with sulfonated ditolyl ether (see col. 6, lines 36-43; a composition containing as component (A) a compound of the formula (1)).



Jollenbeck et al. fails to disclose that the composition is characterized in that the weight ratio of components (A):(B) is from 19:1 to 3:1.

However, it is noted that one of ordinary skill in the art could optimize the amount of each component used in the composition based on routine experimentation and the teachings of Jollenbeck et al. described above. Burden is shifted to the Applicant to provide evidence that the claimed ranges produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. See *In re Dreyfus*, 22 CCPA (Patents) 830, 73 F.2d, *In re Boesch and Slaney*, 205 USPQ 215 (CCPA 1980), and MPEP 2144.05.

As to claims 4 and 7-9, Jollenbeck et al. teaches a composition wherein X is an acid radical derived from sulfuric or orthophosphoric acid (see col. 2, lines 36-42); the composition additionally containing (C) a polyadduct of 2 to 80 moles of alkylene oxide with unsaturated or saturated monoalcohols, fatty acids, fatty amines or fatty amides of

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8 to 22 carbon atoms (see col. 5, lines 38-44); a composition where component (C) is a polyadduct of 3 to 30 moles of ethylene oxide with 1 mole of a fatty alcohol of 12 to 24 carbon atoms (polyadducts of 2 to 80 moles ethylene oxide replaced by higher saturated monoalcohols, see col. 5, lines 38-44); a composition where component (C) is a polyadduct of 20 to 30 moles of ethylene oxide with 1 mole of stearyl alcohol (see col. 5, lines 38-44).

Regarding claim 10, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778F.2d 775,227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.051. Applicant has not provided evidence for the criticality of their composition percentage weights as compared to the composition taught in Jollenbeck et al. that can also be used for dyeing textile materials. Therefore, and in conjunction with the U.S.C. 112 rejection issues stated above, the claimed composition would have been obvious to one of ordinary skill in the art at the time the invention was made.

As to claims 11-15, Jollenbeck et al. teaches an aqueous dispersion containing 5-40% by weight of a benzotriazole UV absorber and the composition according to claim 1 (see col. 1, lines 10-41 and the structure of formula (1) shown below); an aqueous dispersion containing a UV absorber that is the benzotriazole compound of formula (2) where R<sub>1</sub> is halogen and R<sub>2</sub> and R<sub>3</sub> are hydrogen (structure of formula (1) shown below right where R is halogen, see col. 1, lines 13-26); an aqueous dispersion containing a UV absorber that is the benzotriazole compound of formula (2a) (structure

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of formula (1) shown below right where R is C<sub>1</sub>-alkyl, and B is further substituted by a lower alkyl, the C(CH<sub>3</sub>)<sub>3</sub>, see col. 1, lines 13-26); an aqueous dispersion containing 1-10% by weight of a stabilizing or thickening agent (see col. 4, lines 37-45); dispersion containing a heteropolysaccharide formed from the monosaccharides glucose and mannose and glucuronic acid as thickening agent (see col. 5, lines 5-15).

As to claim 16, Jollenbeck et al. (US '669) also teaches a process for dyeing textile material which comprises dyeing this material in the presence of an aqueous dispersion (see col. 8, lines 3-10).

### ***Response to Amendment***

4. The declaration under 37 CFR 1.132 filed on October 22, 2009 is insufficient to overcome the rejection of claims 1-17 based upon 35 U.S.C. 103(a) as being unpatentable over Jollenback et al. (US 5,009,669) as set forth in the last Office action because: The declaration is not commensurate in scope with the claims. Claim 1 is currently amended to recite only the benzotriazole UVA and the sulfonated ditolyether formaldehyde condensate, however the provided declaration only provides evidence for this composition at one particular ratio. The instant claim 1 is of broader scope than the narrow scope demonstrated by the declaration (and includes additional components besides A and B). Therefore, the demonstrated reduction in differential pressure is only valid for the composition at that particular ratio and does not overcome the teachings of Jollenback et al.

***Response to Arguments***

5. Applicant's arguments filed on July 21, 2010 (incorporating the arguments filed on October 22, 2009) have been fully considered but they are not persuasive.

Applicants argue that Jollenbeck et al. do not teach or suggest any specific amounts of this optional dispersing agent (component A) in relation to its dispersing agent (B), and that the Applicants' claimed weight ratio is not one that has been optimized within the conditions taught in Jollenbeck et al. by routine experimentation. As stated above, the experimental data provided by Applicant in the declaration is not commensurate in scope with the instant claims. Therefore, the combination of components A and B taught by Jollenbeck et al. renders the claims obvious (see abstract and col. 9, lines 58-61).

The Applicants further argue that they have surprisingly found that the differential pressure observed during static dyeing can be substantially reduced when components (A) and (B) are combined at a weight ratio ranging from 19:1 to 3:1 then added to a solution containing a UV absorber. As stated above, the experimental data provided by Applicant in the declaration providing evidence for this result is not commensurate in scope with the instant claims. Furthermore, the instant claim 1 only claims the **composition** itself, on which the differential pressure observed during static dyeing as an unexpected result has no effect, and does not claim this static dyeing process until dependent claim 16. Therefore, this experimental proof of unexpected result is irrelevant to the instant claim 1. Accordingly, the rejections are maintained.

***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATIE HAMMER whose telephone number is (571)270-7342. The examiner can normally be reached on Monday to Friday, 10:00am EST to 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harold Y Pyon/  
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November 30, 2010



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